

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILMAN GONZALEZ ROSARIO,  
et al.,

CASE NO. C15-0813JLR

## ORDER

## Plaintiffs,

V.

**U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES, et al.,**

## Defendants.

## I. INTRODUCTION

Before the court are two letter briefs filed by the parties. (Plf. Ltr. (Dkt. # 138); Def. Ltr. (Dkt. # 139).) The parties filed these letters pursuant to a stipulated order directing them to do so. (*See* Stip. Order (Dkt. # 137).) The parties ask the court to resolve two disputes concerning the parties' agreed plan to implement the court's injunction in this matter. (*See generally* Plf. Ltr.; Def. Ltr.; *see also* Agreed Imp. Plan (Dkt. # 134-1); SJ Order/Injunction (Dkt. # 127).) In addition to their initial filings, the

1 court ordered the parties to simultaneously file responsive letters (11/15/18 Order (Dkt.  
2 # 140)), and those letters are also before the court (Plf. Resp. Ltr. (Dkt. # 141); Def. Resp.  
3 Ltr. (Dkt. # 142)). Based on the parties' initial and responsive letters, the court resolves  
4 the parties' disputes as described below.

5 **II. BACKGROUND**

6 On July 18, 2017, the court granted in part and denied in part Plaintiffs' motion for  
7 class certification. (CC Order (Dkt # 95) at 27.) The court certified a class of noncitizens  
8 who have filed or will file applications for employment authorization that were not or  
9 will not be adjudicated within 30 days and who have not or will not be granted interim  
10 employment authorization. (*Id.* at 26.) The court further stated that the class consists of  
11 only those applicants for whom 30 days has accrued or will accrue under the applicable  
12 regulation, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4). (*Id.* at 27.)

13 On July 26, 2018, the court granted Plaintiffs' motion for summary judgment and  
14 found Defendants in violation of 8 C.F.R. § 208.7(a)(1). (SJ Order at 12.) The court also  
15 enjoined Defendants "from further failing to adhere to the 30-day deadline for  
16 adjudicating [employment authorization document ("EAD")] applications [for asylum  
17 seekers], as set forth in 8 C.F.R. § 208.7(a)(1)." (*Id.*) Finally, the court ordered  
18 Defendants "to submit status reports every six (6) months regarding the rate of  
19 compliance with the 30-day timeline." (*Id.*) At the time of the order, Defendants' own  
20 data revealed that from 2010 to 2017, Defendant U.S. Citizenship and Immigration  
21 Services ("USCIS") met the 30-day deadline in only 22% of cases. (See *id.* at 3.)

22 //

1       On September 14, 2018, the parties submitted a joint plan for implementation of  
2 the court’s order and injunction. (Joint Statement (Dkt. # 134); *see also* Agreed Imp.  
3 Plan.) Nevertheless, the parties stated they had not been able to come to agreement on  
4 two points: “(1) whether the [c]ourt should specify specific rates of compliance for  
5 employment authorization document (EAD) adjudication as part of an implementation  
6 order and what those rates should be; [and] (2) the appropriate venue for filing any  
7 Federal District Court action where an EAD application is not adjudicated in compliance  
8 with this [c]ourt’s order, after the individual has complied with the steps set forth in the  
9 implementation plan.” (Joint Statement at 1.) The parties asked the court if they could  
10 “simultaneously file short letter-briefs of no more than three pages addressing these two  
11 issues” and have the court “resolve this lingering dispute.” (*Id.*) On October 3, 2018, the  
12 court entered an order consistent with the parties’ stipulated motion. (10/3/18 Order  
13 (Dkt. # 137); *see also* Plf. Ltr.; Def. Ltr.) At the direction of the court, the parties also  
14 simultaneously filed responsive letters. (11/15/18 Order; Plf. Resp. Ltr.; Def. Resp. Ltr.)

15       On September 21, 2018, Defendants filed a notice of appeal concerning the court’s  
16 summary judgment order and injunction. (Not. of App. (Dkt # 135).)

17       On January 25, 2019, Defendants submitted their first status report pursuant to the  
18 court’s order. (Status Report (Dkt. # 144); *see also* SJ Order at 12.) Defendants’ status  
19 report indicates that Defendants achieved a 96.3% compliance rate with 8 C.F.R.  
20 § 208.7(a)(1) in December 2018, and an average compliance rate of 92.7% for the final  
21 quarter of 2018. (Status Report at 2; *see also* Status Report Ex. A (Dkt. # 144-1) at 3.)

22       The court now considers the issues presented in the parties’ letters.

### III. ANALYSIS

#### A. Jurisdiction

Because Defendants filed a notice of appeal (Not. of App. (Dkt. # 135)), the court initially considers its jurisdiction. The filing of a notice appeal generally divests the district court of jurisdiction over the matters appealed. *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46, Int'l Typographical Union*, 686 F.2d 731, 734 (9th Cir. 1982), amended sub nom. *McClatchy Newspaper v. Local 46* (9th Cir. Sept. 22, 1982). Nevertheless, the district court retains jurisdiction to enforce an injunction under certain exceptions to this rule. First, Federal Rule of Civil Procedure 62(d) provides that “[w]hile an appeal is pending from . . . [a] final judgment that grants . . . an injunction, the court may suspend, modify, restore or grant an injunction on terms for bond or other terms that secure the opposing party’s rights.” Fed. R. Civ. P. 62(d). Second, until its judgment is superseded on appellate review, the district court retains jurisdiction to enforce the injunction and to preserve the status quo. See *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001); *Robinson v. Delgado*, No. 1:02-CV-01538-NJV, 2012 WL 4753493, at \*1 (N.D. Cal. Oct. 4, 2012). Thus, the court concludes that it retains jurisdiction to consider the issues that the parties have stipulated to place before this court.

## **B. Rates of Compliance**

Plaintiffs argue that the court should require Defendants to be in full compliance with 8 C.F.R. § 208.7(a)(1) by a date certain instead of simply requiring 6-month status reports. (Plf. Ltr. at 1.) Defendants assert that an order specifying Defendants' rate of

1 compliance would be an improper modification of the court’s injunction and would  
2 improperly curtail the scope of the court’s adjudication of Defendants’ “substantial  
3 compliance” with the injunction if Plaintiffs were to pursue an enforcement action. (Def.  
4 Ltr. at 2.)

5 The court agrees that adding such a provision to the injunction when the court has  
6 already specified that Defendants are to submit status reports at regular intervals would  
7 be an improper modification to the court’s injunction. A party seeking to modify an  
8 injunction bears the burden of establishing that a significant change in circumstances  
9 warrants a revision of the injunction. *See Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S.  
10 367, 383 (1992). Here, even if the court had jurisdiction to order such a change, *see*  
11 *supra* § III.A., Plaintiffs have failed to meet their burden. Defendants’ January 25, 2019,  
12 status report demonstrates clear improvement in Defendants’ compliance rates. (*See*  
13 Status Report.) Given that the adjudication rate reflects significant improvement since  
14 the court entered its injunction, modification of the court’s injunction to include specific  
15 rates of compliance is not justified by any change in the law or facts.

16 Further, if Plaintiffs at some point allege that Defendants have failed to comply  
17 with the court’s injunction, their remedy is a motion for civil contempt. Civil contempt is  
18 defined as “a party’s disobedience to a specific and definite court order by failure to take  
19 all reasonable steps within the party’s power to comply.” *Reno Air Racing Ass’n., Inc. v.*  
20 *McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). As Defendants point out, substantial  
21 compliance is a defense to civil contempt. *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d  
22 1376, 1379 (9th Cir. 1986). “If a violating party has taken all reasonable steps to comply

1 with the court order, technical or inadvertant [sic] violations of the order will not support  
2 a finding of civil contempt.” *Id.* (internal quotations omitted); *see also Kelly v. Wengler*,  
3 822 F.3d 1085, 1096 (9th Cir. 2016) (“A contemnor in violation of a court order may  
4 avoid a finding of civil contempt only by showing it took *all* reasonable steps to comply  
5 with the order.”) (italics in original). Thus, the court concludes that adoption of specific  
6 rates of compliance would not be appropriate because such rates would invite the  
7 possibility of arbitrary enforcement actions that would fail to take into account the  
8 reasonable steps that Defendants take to comply with the court’s order.

9         Based on the foregoing analysis, the court declines to require Defendants to be in  
10 full compliance with 8 C.F.R. § 208.7(a)(1) by a date certain.

11 **C.     Venue for Future Individual Actions**

12         The parties agree that only this court has jurisdiction to enforce compliance with  
13 issues that affect all or a substantial part of the class. (Plf. Resp. Ltr. at 3; Def. Ltr. at 3  
14 (“[T]o the extent that Plaintiffs seek enforcement of this [c]ourt’s injunction . . . on a[]  
15 . . . class-wide basis—the only proper venue is in this [c]ourt.”). The parties disagree on  
16 whether this court is the only court to have jurisdiction over an action filed by an  
17 individual class member seeking to compel adjudication of his or her individual EAD  
18 application. Plaintiffs argue that any district court that would otherwise have venue  
19 should be able to adjudicate individual plaintiffs’ claims to compel timely adjudication of  
20 their individual EAD applications. (Plf. Ltr. at 2-3; Plf. Resp. Ltr. at 3.) Defendants  
21 insist that all such individual claims must be filed in this court. (Def Ltr. at 3; Def. Resp.  
22 Ltr. at 1-2.)

1 Defendants' position is both practically problematic and legally incorrect. As  
2 Plaintiffs point out, there were over 200,000 initial asylum EAD applications filed in  
3 Fiscal Years 2017 and 2018. (*See* Plf Ltr. at 2, Ex. A.) The class is numerous and  
4 inherently transitory. As such, there will be class members in various locations  
5 throughout the country who may wish to file mandamus or Administrative Procedure Act  
6 district court actions if their EAD applications are not decided within 30 days. Requiring  
7 all of these actions to be filed in this court would represent an unreasonable and  
8 unwarranted burden on both this court and the individual plaintiffs who may be involved.  
9 Further, any such district court action would require examination of more than what this  
10 court already decided—that USCIS is obligated to comply with the 30-day deadline in 8  
11 C.F.R. § 208.7(a)(1). (*See generally* SJ Order.) For example, based on the specific facts  
12 alleged, such individual actions may require the court to engage in additional factual  
13 inquiry to determine whether the 30-day clock has run, whether the EAD application was  
14 complete, and whether the individual met the requirements of the implementation plan,  
15 was responsible for any delay, or had been convicted of an aggravated felony.

16 This court's binding resolution of the common question whether USCIS is  
17 obligated to adjudicate initial asylum EADs within 30 days is distinct from the factual  
18 questions that may arise in individual actions. The general principle of class litigation is  
19 that court may resolve common questions—in this case the 30-day deadline—but  
20 individual, future claims for individualized relief can still be brought separately. *See,*  
21 *e.g., Cooper v. Fed. Reserve Bank of Richmond*, 467 U.S. 867, 881 (1984) (observing that  
22 Rule 23 class action procedures are designed to provide a mechanism for the expeditious

1 decision of common questions, but would not bar later exclusively individual claims); *In*  
2 *re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2012 WL 273883, at \*3  
3 (N.D. Cal. Jan. 30, 2012) (“[A] Rule 23(b)(2) judgment, with its one-size-fits-all  
4 approach and its limited procedural protections, will not preclude later claims for  
5 individualized relief.”); *Cameron v. Tomes*, 990 F.2d 14, 17 (1st Cir. 1993) (“[I]n  
6 *Cooper*, . . . the Supreme Court confirmed what common sense would suggest: a class  
7 action judgment . . . binds the class members as to matters actually litigated but does not  
8 resolve any claim based on individual circumstances that was not addressed in the class  
9 action.”).

10 Thus, the court concludes that any class-wide relief requested by either Plaintiffs  
11 or Defendants, including any contempt motions, are properly directed to this court.  
12 However, the class certification order in this case does not preclude individual class  
13 members from filing separate actions in other appropriate forums because the delay in a  
14 particular case involves individual circumstances and would require the court to go  
15 beyond the legal issues already decided by this court.

16 **IV. CONCLUSION**

17 Based on the foregoing analysis, the court (1) declines to require full compliance  
18 with its injunction by a date certain, and (2) declines to require individuals who seek to  
19 //  
20 //  
21 //  
22 //

1      || compel Defendants to adjudicate a specific EAD application to file their action in this  
2      court.

3                Dated this 20th day of March, 2019.

4                  
5                \_\_\_\_\_

6                JAMES L. ROBART  
7                United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22